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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/975,588	10/11/2001	Benny B. Johansen	RXSD 1019-1	8700
22470	7590	01/24/2006	EXAMINER	
HAYNES BEFFEL & WOLFELD LLP P O BOX 366 HALF MOON BAY, CA 94019			LEE, PING	
			ART UNIT	PAPER NUMBER
			2644	
DATE MAILED: 01/24/2006				

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/975,588

Applicant(s)

JOHANSEN ET AL.

Examiner

Ping Lee

Art Unit

2644

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 03 October 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-41 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-41 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 112

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claims 18-21 and 37-41 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Regarding claims 18-21 and 37-41 respectively, line 2, "the first audio source" lacks antecedent basis.

Claim Rejections - 35 USC § 102

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

4. Claims 1, 2, 8, 17, 27, 28, 35 and 36 are rejected under 35 U.S.C. 102(a) as being anticipated by hearingrx.com.

Regarding claims 27, 28, 35 and 36, hearingrx.com discloses a method of testing the hearing of a user utilizing a speaker of a computer system. The claimed first audio source reads on sound player as disclosed on the page "SETUP VOLUME CONTROL", the claimed second audio source reads on other sources inherently included, such as microphone, CD player. A computer program is downloaded from the website (see

"DOWNLOAD SOUND FILES") to the computer. After that, the program is being executed. The execution of the program as disclosed in hearingrx.com un-muting the first audio source (setting the volume control of the sound player to the maximum is an act of un-muting). A stimulus is generated ("HEARING TEST") and an input is received from the user indicating audibility.

Regarding claims 1, 2, 8 and 17, hearingrx.com discloses a method of testing the hearing of a user utilizing a speaker of a computer system. The claimed step of muting first audio source reads on muting window exclamation as disclosed on the page "SETUP VOLUME CONTROL", the claimed second audio source (other sources inherently included, such as microphone, CD player, the test tone). A computer program is downloaded from the website ("DOWNLOAD SOUND FILES") to the computer. After that, the program is being executed. The execution of the computer program promotes the users to mute the first audio source (at disclosed under "SETUP VOLUME CONTROL", sound source window exclamation is muted). A stimulus is generated ("HEARING TEST") and an input is received from the user indicating audibility.

Claim Rejections - 35 USC § 103

5. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.
6. Claims 3-6, 18-20, 29-34 and 37-41 are rejected under 35 U.S.C. 103(a) as being unpatentable over a hearing test program from hearingrx.com.

Regarding claims 3 and 29, hearingrx.com fails to show email. Although hearingrx.com teaches downloading the program, it was within the level of ordinary skill in the art to use other well known methods, such as through email, to transfer the program for the user without generating any unexpected result. Thus, it would have been obvious to one of ordinary skill in the art to modify hearingrx.com by offering the user to accept the hearing test program through different channel, such as through email.

Regarding claims 4-6, 18-20, 30-32 and 37-39, hearingrx.com teaches that sound volume has to be adjusted. Therefore, it would have been obvious for the user to check the box and adjust the volume setting.

Regarding claims 33, 34, 40 and 41, although hearingrx.com fails to explicitly show the claimed sound source, including MIDI and WAVE, it would have been obvious to one of ordinary skill in the art to use any suitable sound source to generate the testing stimulus.

7. Claims 7, 9-16 and 21-26 are rejected under 35 U.S.C. 103(a) as being unpatentable over a hearing test program from hearingrx.com in view of didyouhearme.com and Barmore (US 6,016,352).

Regarding claims 7, 9, 10, 15, 16, 21, 22 and 26, hearingrx.com discloses a method of testing the hearing of a user utilizing a speaker of a computer system. The printout of the web page from hearingrx.com fails to show the step of storing a value that indicates whether the first audio source was muted and if the stored value indicates that the first audio source was not muted, then muting the first audio source.

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The web page from hearingrx.com teaches that using speakers for testing would not be as accurate as the one using the headphone. Furthermore, the user has to cover one ear while the other one is being tested when using speakers for testing. Another similar on-line hearing testing, didyouhearme.com, teaches that the user has to be in a quiet room, no noise or sound should be presented during the test. The accuracy of the hearing test is, as understood by one skilled in the art, depended on the testing environment which should have no other sound except the testing stimulus regardless whether the testing is performed at home or at professional testing facility (within anechoic chamber). In order to make sure there is no other sound in a nonprofessional setting, all sound sources should be cut off whenever it is possible. A computer, as commonly known, could have multiple sound sources, including microphone. The user can manually mute each and every sound source, but this takes time and the user sometime might forget to mute all the sources. Barmore teaches a muting control circuit for computer sound circuit. A plurality of sound sources could be muted simultaneously by a single GPIO bit (col. 5, lines 24-30). Thus, it would have been obvious to one of ordinary skill in the art to modify the hearing test program from hearingrx.com in view of didyouhearme.com and Barmore by muting the unused sound sources in a computer during hearing testing using a single bit if the source has not been muted in order to allow the user to take the test without manually muting the sources.

Regarding claim 9, although hearingrx.com and didyouhearme.com fail to explicitly show un-mute the first audio source after the hearing test is done, the user

inherently would manually perform the un-muting after the testing is done. This claimed step is being performed automatically.

Furthermore, it is well settled that it is not "invention" to broadly provide an automatic means to replace manual activity which has accomplished the same result. In re Venner et al., 120 USPQ 192.

Response to Arguments

8. Applicant's arguments filed 10/3/05 have been fully considered but they are not persuasive.

Applicant argued that there is no specific text in hearingrx.com document to support 102 rejection.

For claim 27, the claimed first audio source reads on sound player as disclosed on the page "SETUP VOLUME CONTROL", the claimed second audio source read on other sources inherently included, such as microphone, CD player. In response to applicant's statement that there is no computer program in hearingrx.com document that un-mutes an audio source, it is noted that the claim never state a computer program to un-mute the source. The claim states "execution of the computer program un-mute the source" (emphasis added). Setting volume control, muting or un-muting is a part of the execution of the computer program, therefore, hearingrx.com discloses the claimed invention. Claims 36 and 1 are being rejected for the same reason. When the instruction from the computer prompts the user to do volume control, muting or un-muting, it is a part of executing the program.

Applicant argued that there is no suggestion to have a computer program which mutes sound sources, including a microphone.

It is clear that applicant's arguments against the references individually, one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986). The website didyouhearme.com teaches the importance of having a quiet room to perform the testing. At a professional testing facility, a person is being tested in an anechoic chamber. This clearly provides a motivation for person skilled in the art to improve the hearing test taken at home. Barmore teaches a general muting program for muting a plurality of audio sources simultaneously. The general sound sources are being labeled as V_{IN} in Fig. 6. Applicant's argument that the audio output cannot be read as audio source is not supportive. An audio source would provide an audio output signal to a speaker. If there is no audio signal being applied to the speaker due to switching, the audio source is muted from the speaker. As shown in Fig. 6 of Barmore, there are two audio sources. Does this imply that Barmore's muting circuit can only mute two audio sources? One skilled in the art would say no to this question. Does this imply that the computer system has only two audio sources? One skilled in the art would say depends on the computer system. Barmore's teaching suggests how to mute one, two or more audio sources using a single bit. The designer could designs the circuit to mute any combination. Therefore, it would have been obvious to modify

hearingrx.com in view of didyouhearme.com and Barmore to mute all unused sound sources included in the computer, including the microphone.

Conclusion

9. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

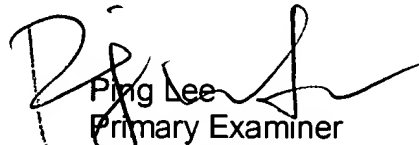
10. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Ping Lee whose telephone number is 571-272-7522.

The examiner can normally be reached on Monday and Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Vivian C. Chin can be reached on 571-272-7848. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


Ping Lee
Primary Examiner
Art Unit 2644

pwl